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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202494
Party	Defendant Facebook, Inc.
Correspondence Address	ANNE PECK COOLEY LLP 777 6TH ST NW STE 1100 WASHINGTON, DC 20001-3706 UNITED STATES trademarks@cooley.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Kathryn D. Duvall
Filer's e-mail	kduvall@cooley.com , jnorberg@cooley.com , trademarks@cooley.com , nmcMahon@cooley.com
Signature	/KDD/
Date	01/30/2012
Attachments	Facebook_Fedore_Reply ISO MTD_01302012.pdf ( 3 pages )(229256 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Ser. No. 85/147,955  
Mark: FACEBOOK

JASON FEDORE,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91202494
	)	
FACEBOOK, INC.,	)	
	)	
Applicant.	)	
_____	)	

**APPLICANT FACEBOOK, INC.'S REPLY IN SUPPORT OF MOTION TO DISMISS  
NOTICE OF OPPOSITION FOR FAILURE TO STATE A CLAIM UNDER RULE  
12(b)(6)**

Mr. Fedore's response to Facebook's Motion to Dismiss fails to identify allegations by Mr. Fedore that would be sufficient to state a statutory basis for the refusal of the FACEBOOK application (Ser. No. 85/147,955). Instead, Mr. Fedore continues to rely solely on allegations of standing or "damage" stemming from Facebook's own filing of an opposition to the registration of Mr. Fedore's FACEMEETING mark. Potential damage alone, however, is insufficient to form a basis for opposition. An opposition to a trademark application must allege both standing and a valid statutory ground for opposing the mark. *Corporacion Habanos SA v. Rodriguez*, 99 USPQ2d 1873, 1874 (TTAB 2011).

The Trademark Trial and Appeal Board Manual of Procedure ("TBMP") section cited by Mr. Fedore does not eliminate this requirement. (Motion to Dismiss Response, ¶¶ 4, 6, 8). TBMP §303.03 simply defines "damage" for purposes of standing; it does not address the requirement that an opposer also allege a statutory basis for the opposition. *Corporacion*

*Habanos*, 99 USPQ2d at 1874. Nor does Mr. Fedore's hypothetical, apparently offered to show that it would be "unfair" to require a statutory basis, eliminate the basic requirement that Mr. Fedore allege a statutory basis for opposition.

Accordingly, Mr. Fedore's Opposition fails to meet the requirements necessary to maintain this proceeding. Facebook respectfully requests that the Board grant its Motion to Dismiss Mr. Fedore's Notice of Opposition in its entirety.

Dated: January 30, 2012

COOLEY LLP  
ANNE H. PECK  
KATHRYN D. DUVALL



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Kathryn D. Duvall  
Cooley LLP  
777 6<sup>th</sup> St., NW  
Suite 1100  
Washington, DC 20001

*Attorneys for Applicant Facebook Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 30, 2012, a true and correct copy of the foregoing  
**APPLICANT FACEBOOK, INC.'S REPLY IN SUPPORT OF MOTION TO DISMISS  
OPPOSITION FOR FAILURE TO STATE A CLAIM UNDER RULE 12(b)(6)** was placed  
in the United States Mail, postage prepaid, addressed to correspondent for Opposer as follows:

Gregg R Zegarelli  
Attorney  
PO Box 113345  
Pittsburgh, PA 15241

Date: January 30, 2012

*Kathryn D. Duvall*  
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Kathryn D. Duvall